

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

JOHN R. DURSO, et. al.,

-X

Plaintiffs,

MEMORANDUM AND
ORDER

CV 05-3498

-against-

(Wexler, J.)

CAPPY'S FOOD EMPORIUM, LTD.,

Defendant.

-X

APPEARANCES:

FRIEDMAN & WOLF ESQS.
BY: NATHAN V. BISHOP, ESQ.
1500 Broadway Suite 2300
New York, New York 10036
Attorneys for Plaintiffs

JOSEPH D. MIRABELLA, ESQ.
1235 Montauk Highway
Mastic, New York 11950
Attorney for Defendant

WEXLER, District Judge

This is an action brought pursuant to the Employee Retirement Income Security Act of 1974 ("ERISA"). The action was commenced by Plaintiffs in their capacities as Trustees and Fiduciaries of the Local 338 RWDSU/UFCW ("Local 338") Health and Welfare and Retirement Funds (the "Trustees" or the "Plaintiffs"). Defendant is Cappy's Food Emporium, Inc. ("Cappy's" or "Defendant"). Plaintiffs commenced this action pursuant to 29 U.S.C. §§ 1132 and 1145 to recover payments allegedly due by Cappy's to the funds administered by the

Trustees.

In a Memorandum and order dated December 14, 2006, this court granted Plaintiffs' motion for summary judgment. The court directed Plaintiffs to submit their request for attorneys' fees and costs and that request is presently before the court.

DISCUSSION

Section 502(g)(2) of ERISA provides for the award of attorneys' fees and costs where, as here, the trustees of a pension plan have prevailed in an action for delinquent contribution. 29 U.S.C. § 1132(g)(2)(D). Plaintiffs' counsel seeks an award of \$70,108.75 in fees and \$1,709.85 in disbursements. Counsel has submitted detailed records indicating the time spent on this matter as well as the hourly rates sought. Defendant challenges both the reasonableness of the time spent as well as the hourly fees sought.

The court has reviewed the detailed report regarding the number of hours spent by attorneys litigating this matter. In light of the discovery and motion practice, including a motion to dismiss and for summary judgment, the court holds that the hours submitted are reasonable. The court also holds that disbursements in the amount of \$1,709.85 are reasonable.

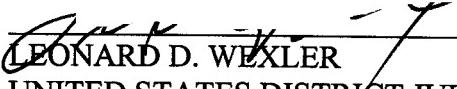
As to the hourly fees, the court notes that the partner assigned to this matter (who billed only ten hours) seeks an hourly rate of \$350 for 1.5 of the hours and 370 for 8.5 hours of work. Associates are billed at between \$315 and \$330 per hour. The court holds that the fees sought are reasonable and awards Plaintiffs' counsel the full amount sought.

CONCLUSION

Plaintiffs' counsel is awarded attorneys fees in the amount of \$70,108.75 and disbursements in the amount of \$1709.85. Plaintiffs are directed to submit a judgment reflecting

the opinion of this court

SO ORDERED.



LEONARD D. WEXLER
UNITED STATES DISTRICT JUDGE

Dated: Central Islip, New York
April 3, 2007